

Internal Revenue Service  
Director, Exempt Organizations  
Rulings and Agreements

Department of the Treasury  
P.O. Box 2508 - Room 7008  
Cincinnati, OH 45201

Date: [REDACTED]

Employer Identification Number:  
[REDACTED]

Person to Contact - I.D. Number:  
[REDACTED]

Contact Telephone Numbers:  
[REDACTED]

Phone

FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure 1.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 592, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 10 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 210.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

  
  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures: 4

ENCLOSURE I

Facts:

The information submitted indicates that you were incorporated on [REDACTED] [REDACTED] You filed application 1023 for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code on [REDACTED]

The Articles of Incorporation state that the specific purposes for which the Association was formed are for maintaining, operating, and governing [REDACTED] Condominium Project, hereinafter referred to as the "Project".

The Articles of Incorporation indicates that members shall be owners of Condominiums in the Project, that membership is mandatory, and that no person or entity other than an owner of a condominium in the Project may be a Member of the Association.

Your application Form 1023, Application for Recognition of Exemption under section 501(c)(3), states that your organization conducts the following activities:

"A major focus of the Association is the operation and maintenance of a safe and beautiful living environment. A large portion of the Association's monthly dues and revenues is devoted to maintaining and improving outside living conditions including, but not limited to, lawn care, lighting, siding on the outside of the condominiums, maintaining a "common" gathering area, and other such activities. Essentially, the Association is responsible for maintaining all of the property and facilities located outside the "four corners" of each individual condominium."

"Another significant activity the Association has undertaken is to pay for each condominium owner's utilities and services such as gas, water, and cable. The Association makes these services available to the owners at no additional expense. In exchange for condominium owner's monthly dues, the owners receive the benefits and services of having their utilities paid for."

Your membership is not open to the general public. The information submitted indicates that you will be financially supported by membership fees and dues and your expenses incurred would be from maintaining the lawn, parking facilities, performing structural repairs to the outside of individual condominiums, and paying for individual condominium owner's utilities.

Law regarding Section 501(c)(3):

Section 501(c)(3) of the Internal Revenue Code of 1986 provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for charitable, religious, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as operated exclusively for exempt purposes only if it engages primarily in activities, which accomplish one or more exempt purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, even if an organization has many activities which further exempt purposes, exemption may be precluded if it serves a private interest.

In Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner of Internal Revenue, U.S. Tax Court, T.C. Memo 1986-348, the court found inurement to exist and denied exemption to the applicant organization. The organization was created to aid the victims of coma, resulting from motor vehicle accidents, etc, but there was a prohibitive benefit from the petitioner's funds that inured to the benefit of a private individual, specifically Wendy Parker.

Revenue Ruling 69-175, 1969-1 C.B. 149 described an organization that was formed by parents of students attending a private school. The sole purpose of the organization was to provide bus transportation to and from school for the members' children. The court found that the organization enabled the participating parents to fulfill their individual responsibility of transporting their children to school. Thus, the organization served a private rather than public interest and was not exempt from Federal income tax under section 501(c)(3) of the Code.

Analysis of Law regarding Section 501(c)(3):

Your organization is similar to the organizations described in Revenue Ruling 69-175 and the Wendy Parker court case in that your organization's financial support, which is provided by the owners of the condominiums, is used to relieve the condominium owners of having to maintain their personal property and other expenses that they would otherwise be responsible for. Your organization is providing services for the maintenance and upkeep of the condominium owners property including but limited to lawn care, lighting, siding on the outside of the condominiums, maintaining the common grounds, and paying the utility expenses for the condominium owners. These services relieve the condominium owners of the responsibility of paying for expenses they otherwise would have to pay and as established in Revenue Ruling 69-175 and the Wendy Parker court case is a not an exempt purpose under section 501(c)(3) of the Code.

Therefore, you do not meet the operational test since your organization's operations serve the private interests of the condominium owners rather than a public interest.

Your organization also fails to meet the organizational test since your Articles of Incorporation neither has a purpose clause or a dissolution clause that meets the requirements for exemption under section 501(c)(3) of the Code. The Articles of Incorporation state that the specific purposes for which the Association was formed are for maintaining, operating, and governing [REDACTED], a [REDACTED] Condominium Project, hereinafter referred to as the "Project" and does not contain a dissolution clause.

Since your organization does not meet the organizational test or the operational test for exemption under section 501(c)(3) of the Code, we have determined that you do not qualify for exemption under section 501(c)(3) of the Code.

Law regarding Section 501(c)(4)

Section 501(c)(4) of the Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

In Commissioner v. Lake Forest, Inc., 305 F.2d 814 (4th Cir. 1962), the court held that a cooperative housing corporation was not exempt as a social welfare organization under section 501(c)(4) of the Code since its activities were of the nature of an economic and private cooperative undertaking.

Rev. Rul. 65-201, 1962-3 C.B. 170, holds that a cooperative organization operating and maintaining a housing development and providing housing facilities does not qualify for exemption from Federal income tax under section 501(c)(12), or any other provision of the Code.

Rev. Rul. 69-280, 1969-1 C.B. 152, holds that a nonprofit organization formed to provide maintenance of exterior walls and roofs of members' homes in a development is not exempt from Federal income tax under section 501(c)(4) of the Code.

Revenue Ruling 74-17, 1974-1 CB 130, (Jan. 01, 1974) describes an organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project, as defined by State statute, with membership assessments paid by the unit owners that did not qualify for exemption under section 501(c)(4) of the Code. By virtue of the essential nature and structure of a condominium system of ownership, the rights, duties, privileges, and immunities of the members of an association of unit owners in a condominium property derive from, and are established by, statutory and contractual provisions and are inextricably and compulsorily tied to the owner's acquisition and enjoyment of his property in the condominium. In addition, condominium ownership necessarily involves ownership in common by all condominium unit owners of a great many so-called common areas, the maintenance and care of which necessarily constitutes the provision of private benefits for the unit owners.



Analysis of Law regarding Section 501(c)(4):

As in Commissioner v. Lake Forest, Inc. and Rev. Rul. 65-201 your organization is a cooperative housing corporation.

As in Rev. Rul. 69-280 your organization provides maintenance of exterior walls and roofs of members' homes in a development.

As in Revenue Ruling 74-17 your organization is a condominium housing association formed to provide for the management, maintenance, and care of common areas with membership assessments paid by the unit owners. This constitutes the provision of substantial private benefits for the unit owners.

Therefore, your organization is not operated exclusively for the promotion of social welfare because it is not primarily engaged in promoting in some way the common good and general welfare of the people of the community. Your organization is not one which is operated primarily for the purpose of bringing about civic betterments and social improvements.

Your organization is operated exclusively for the private benefit of the condominium owners and promotes the general welfare of the owners. Therefore, we have determined that you do not qualify for exemption under section 501(c)(4) of the Code.

## IRC 528

IRC 528 was enacted under the provisions of the Tax Reform Act of 1976, to provide homeowners' associations with another alternative to exemption under IRC 501(c)(4). Qualifying homeowners' associations that are exempt under IRC 528 are taxable only to the extent provided therein. IRC 528 exempts from income tax any dues or assessments received by qualified homeowners' associations from property owner-members of the organization, where these dues and assessments are used for the maintenance and improvement of its property. All homeowners' associations described in IRC 528 may qualify for this sort of quasi-exempt status by election.

IRC 528 defines a qualified "homeowners' association" as an organization that is a condominium management association or a residential real estate management association if:

- 1) It is organized and operated to provide for the acquisition, construction, management, maintenance, and care of association property;
- 2) It elects to have the section apply for the taxable year;
- 3) No part of the net earnings of the association inures to any private shareholder or individual;
- 4) 60 percent or more of the association's gross income consists solely of amounts received as membership dues, fees, or assessments from owners of residential units, residences or residential lots (exempt function income); and,
- 5) 90 percent or more of the association's expenditures for the taxable year are expenditures for the acquisition, construction, management, maintenance, and care of association property.

Under IRC 528, a homeowners' association that qualifies for exemption under this section would be taxed on any income or support received that did not constitute dues or assessments paid by its property owner-members for maintenance and improvement of its property.

If your organization believes that it is exempt under Section 528 it may elect to file Form 1120-H. Please see the attached Form 1120-H and instructions for further information regarding the filing of Form 1120-H.



Form 8018  
(Rev. Aug. 1983)

Department of the Treasury - Internal Revenue Service  
Consent to Proposed Adverse Action  
(All references are to the Internal Revenue Code)

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

☒ Denial of exemption.

☐ Revocation of exemption, effective.

☐ Modification of exemption from section 501(c)( ) to section 501(c)( ), effective

☐ Classification as a private foundation described in section 509(a), effective

☐ Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for

☐ Classification as an organization described in section 509(a)( ), effective

☐ Classification as an organization described in section 170(b)(1)(A)( ), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

(Signature instructions on back)

Name of Organization:

Signature and Title

Date

Signature and Title

Date